

SPECIAL CIVIL APPLICATIONS NO. 1738, 1835 AND
1876 OF 1997.

Date of decision: 13.3.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. B. G. Jani, advocate for petitioners in all
petitions.

Mr. T.H. Sompura, A.G.P. for respondents in all
petitions.

1. Whether Reporters of Local Papers may be allowed
to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy
of judgment? No
4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder? No
5. Whether it is to be circulated to the Civil
Judge? No

Coram: R.R.Jain,J.

March 13, 1997.

Oral judgment:

Petitioners have challenged the order dated 28.9.1996/
1.10.1996 passed by the Collector, Surat cancelling
mutation entry No. 594 dated 9.12.1976 in the revenue
records of Taluka Choryasi and subsequent notice dated
30.9.1996 for cancelling mutation entry No. 957 in
favour of petitioners who are successor purchasers. Mr.
Sompura, learned A.G.P. for the respondents, makes a

statement that the order dated 28.9.1996/1.10.1996 passed by the Collector, Surat in R.T.S. Revision Case No.21/594/Choryasi was challenged before the Special Secretary (Appeals), Revenue Department, Government of Gujarat, by aggrieved parties and vide order dated 29.11.1996 the impugned order dated 28.9.1996/1.10.1996 passed by the Collector has been set aside and the matter is remanded for fresh consideration. On reading the entire order, it appears that the learned Special Secretary (Appeals), Revenue Department, was influenced by the submission that the learned Collector while cancelling the entry did not hear all the affected parties therefore the Special Secretary thought it fit to pass appropriate order for remand requiring all the affected parties to be heard before deciding on merits. In support of his statement, Mr. Sompura has also produced xerox copy of the order dated 29.11.1996 passed by the Special Secretary (Appeals), Revenue Department.

In light of the aforesaid subsequent development, in my view, present petitions have become infructuous as the impugned order does not survive and if the impugned order does not survive then all subsequent proceedings initiated based thereon also shall not survive. From the record it transpires that the show cause notice under Bombay Land Revenue Rule 108 (6) to the petitioners for cancelling entry No. 957 was necessitated because as the original entry No. 594 from which rights flew for mutating entry No. 957 and if the original entry does not remain in force then all subsequent entries flowing from such entry shall also not remain in force.

As a cardinal rule, when the impugned order dated 28.9.1996/1.10.1996 does not survive, show cause notice also shall not remain in force at this stage and cannot be acted upon and the same deserves to be quashed and set aside.

In these matters Rule has been issued but by virtue of subsequent development when the impugned order does not remain in force, in my view, even if the Rule is partly confirmed quashing and setting aside the impugned notice, under rule 108 (6) no injustice would be caused to the respondents. Accordingly, the impugned show cause notice issued under Rule 108 (6) of the Gujarat Land Revenue Rules are hereby quashed and set aside. It is hereby made clear that by virtue of the order passed by the learned Special Secretary (Appeals), the learned Collector is directed to hear the matter on merits, therefore, while rehearing, the Collector is directed to hear the petitioners also since they are successors in

title and any order to be passed in connection with Entry No. 594 would affect the interest of the petitioners. The learned Collector shall not be influenced by this order while deciding matter on merits by virtue of remand order and would be at liberty to issue fresh notice, if any required, after decision on merits.

Rule is made absolute partly to the aforesaid extent with no order as to costs.